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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

USHA VISWANATHAN, Plaintiff and Appellant, v. LELAND STANFORD JR. UNIVERSITY, et. al., Defendants and Respondents.	H036960, H037048 (Santa Clara County Super. Ct. No. 110CV167671)

In this appeal, plaintiff Usha Viswanathan challenges an order granting summary judgment to Leland Stanford Jr. University, Stanford Law School, and one of the law school's professors, Robert Weisberg. Plaintiff contends that defendants failed to meet their burden to show entitlement to judgment as a matter of law on her claims of libel, slander, and negligent supervision and training. We agree with the superior court, however, that defendants met their burden and that plaintiff failed to raise a triable issue of fact material to these causes of action. We must therefore affirm the judgment and the subsequent order awarding costs to defendants.

Background

Plaintiff graduated from Stanford Law School in June 1994.[1] Between 1997 and 2001 she pursued a lawsuit against Stanford University and the director of Career Services at the law school.[2] After settling that action,[3] plaintiff came to the conclusion that defendant Weisberg, a professor at the law school and, she believed, a supervisor of the Career Services director,[4] was hostile toward her. While visiting the law school she saw Weisberg and thought that he gave her a "very hostile look." She also began receiving what she experienced as "harassing" calls informing her that she was in default on her student loan accounts and "threatening" to report her to a credit reporting agency and the Franchise Tax Board.

In December 2003 plaintiff requested an investigation to determine whether Stanford and Weisberg were disseminating "negative information" about her, thus preventing her from finding employment with a law firm. Between late November and

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[1] References to "Stanford" without specific attribution will be to Stanford Law School and Stanford University collectively.

[2] The named director, Gloria Pyszka, served in that role only until 1999.

[3] Plaintiff represented herself in that federal action for discrimination, in which she claimed that Stanford and others were responsible for her inability to find employment. The district court granted summary judgment to defendants, and her appeal was unsuccessful. In the meantime, she filed two new lawsuits against Stanford and others, accusing them of retaliation and defamation related to comments about her in connection with the prior action. Plaintiff dismissed those actions. When the Ninth Circuit affirmed the judgment in the first action and ordered plaintiff to pay additional costs and fees, she stated that she lacked the funds to pay the entire award. Stanford agreed to waive all the amounts it had been awarded in exchange for a full release.

[4] Weisberg later testified that he might have had some supervisory authority over Pyszka through his former position as associate dean. However, he did not recall actually performing any supervisory responsibilities during that time; those were all handled by the dean.

early December 2004 she received " 'hang-up' calls" that appeared to originate from Stanford phone numbers.

In April of 2006 she believed that she was being monitored by Weisberg and "a student or two" while she was doing research in the law school library. In May plaintiff communicated her "fears" about Weisberg's library behavior to an Emeritus law professor, Marc Franklin. Three or four more hang-up phone calls occurred between May and June of 2006, but after two "suspicious calls" in early June, they stopped for the rest of the year.

On June 6, 2006 plaintiff applied for a temporary restraining order (TRO) against Weisberg "for monitoring [her] and for telephone harassment." The TRO was denied for insufficient proof in July 2006.[5] In June 2008 she again perceivd a "very angry look" from Weisberg when she was at the law school library, and for a few days thereafter she again received phone calls in the middle of the night. After she complained to the chairman of the board of trustees, the calls stopped.

Worried that Weisberg would interfere with her work at a law firm with which she had obtained employment, plaintiff "secretly communicated" with Franklin and visited his residence "several times" to solicit help. In December 2008, however, she was informed by the security guard that a memorandum and picture had been circulated about her to bar her from Franklin's residence.[6]

Plaintiff was laid off from the law firm in December 2008. After that she was unable to find work at any other law firm even after distributing dozens of resumes.

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[5] At the TRO hearing Weisberg testified that he did not remember having plaintiff in any of his classes, that he never gave her a hostile look, and that he did not even know what she looked like until she appeared that day at the hearing.

[6] This statement was excluded on defendants' objection on grounds of hearsay and lack of personal knowledge. On appeal, however, defendants have not objected to plaintiff's continued recital of this evidence.

Plaintiff believed that Weisberg "and others in concert with him at Stanford [were] continuing to blacklist [her]." The "harassing phone calls" periodically resumed, "typically after [she] complained to some Stanford authority about Prof. Weisberg."

On March 3, 2009, plaintiff was in the women's bathroom at the law school when she overheard a conversation between two women. One of them asked the other whether she had seen "that Indian woman" and said, " 'They say she is a stalker' and 'going after a Stanford professor.' "

In October 2009, shortly before her 15th law school reunion, plaintiff received an anonymous letter containing the following message: "We all knew a few months back from Prof. Weisberg that you are a stalker. Why don't you leave? Prof. Weisberg will make sure that any employer in the Bay Area who hires you knows that you are a stalker so why dont [*sic*] you go?" The letter was not signed, and plaintiff's only hint about where it originated was the envelope, which bore a return address of "SLS" (which plaintiff understood to mean Stanford Law School) at a post office box in Stanford, California.

Plaintiff was "extremely upset" by the letter and contacted both the Department of Fair Employment and Housing (DFEH) and the General Counsel for the university. Plaintiff also arranged an interview with an attorney, Kit Knudsen, in which she pretended to be an applicant for a job so that she could determine whether he would receive negative information about her.[7] She requested that the law school send her transcript to Knudsen, and he received it on November 3, 2009. Six days later, Knudsen received a voice mail message stating the following: "Hello. We are aware that you interviewed Ms. Vishwanathan for a position with your firm. As concerned citizens of

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[7] In his deposition Knudsen stated that he made it clear to plaintiff that he "would not participate in any misrepresentation, but that [he] couldn't stop her from doing whatever she intended to do," including sending him a thank-you e-mail for the nonexistent job interview.

the Stanford community we feel that you ought to know that she is a dangerous personality. She has caused a lot of trouble for professors and companies in the past. She even stalked a Stanford [p]rofessor as well. We strongly urge you to reconsider any decision to hire her. Thank you."

Plaintiff filed this action against Stanford and Weisberg on November 19, 2009 in the superior court for San Mateo County. The court granted defendants' motion for change of venue and the matter was thereafter heard in Santa Clara County. Two amendments followed, culminating in the current pleading, the second amended complaint, filed on August 23, 2010.

On April 6, 2011, the court granted defendants' motion for summary judgment and entered judgment for all defendants on April 28, 2011. On May 23, 2011, the court denied plaintiff's motion for a new trial, and two days later plaintiff filed her notice of appeal.

Discussion

1. Appealability

As a preliminary matter, we note that plaintiff purported to appeal from a "judgment granting summary judgment" on April 6, 2011. The April 6, 2011 ruling granting the summary judgment motion, however, is not an appealable order. The judgment was entered April 28, 2011. Nevertheless, because a judgment was eventually filed, we will once again exercise our discretion to construe plaintiff's notice of appeal as pertaining to that April 28 judgment.

2. Standard and Scope of Review

The parties are familiar with the applicable principles of summary judgment review. Summary judgment is properly granted "if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." (Code Civ. Proc., § 437c, subd. (c).) "There is a triable issue of material fact if, and only if, the evidence would allow a reasonable trier of fact to

find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof." (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850.)

A defendant who moves for summary judgment bears the initial burden to show that the action has no merit--that is, for each cause of action one or more elements "cannot be established, or that there is a complete defense to that cause of action." (Code Civ. Proc., § 437c, subds. (o), (p)(2); *Aguilar*, *supra*, 25 Cal.4th at p. 850; *Truong v. Glasser* (2009) 181 Cal.App.4th 102, 109.) When the burden of proof at trial will be on the plaintiff by a preponderance of the evidence, the moving defendant "must present evidence that would preclude a reasonable trier of fact from finding that it was more likely than not that the material fact was true [citation], or the defendant must establish that an element of the claim cannot be established, by presenting evidence that the plaintiff 'does not possess and cannot reasonably obtain, needed evidence' " to support a necessary element of the cause of action. (*Kahn v. East Side Union High School Dist.* (2003) 31 Cal.4th 990, 1003, quoting *Aguilar*, *supra*, 25 Cal.4th at p. 854; *Guz v. Bechtel National, Inc.* (2000) 24 Cal.4th 317, 334.)

If the moving defendant makes that showing, the burden then shifts to the plaintiff to make a prima facie showing that there exists a triable issue of material fact. (*Aguilar, supra,* 25 Cal.4th at p. 850.) "The plaintiff . . . may not rely upon the mere allegations or denials of its pleadings to show that a triable issue of material fact exists, but, instead, shall set forth the specific facts showing that a triable issue of material fact exists as to that cause of action . . . ." (Code Civ. Proc., § 437c, subd. (p)(2).)

On appeal, we conduct a de novo review of the record to "determine with respect to each cause of action whether the defendant seeking summary judgment has conclusively negated a necessary element of the plaintiff's case, or has demonstrated that under no hypothesis is there a material issue of fact that requires the process of trial, such that the defendant is entitled to judgment as a matter of law." (*Guz v. Bechtel National*,

Inc., supra, 24 Cal.4th at p. 334; *Daly v. Yessne* (2005) 131 Cal.App.4th 52, 58.) We apply the same procedure used by the trial court: We examine the pleadings to ascertain the elements of the plaintiff's claim; the moving papers to determine whether the defendant has established facts justifying judgment in its favor; and, if the defendant did meet this burden, plaintiff's opposition to decide whether he or she has demonstrated the existence of a triable issue of material fact. (*Knapp v. Doherty* (2004) 123 Cal.App.4th 76, 84-85; *Varni Bros. Corp. v. Wine World, Inc*. (1995) 35 Cal.App.4th 880, 887.)

3. Plaintiff's Allegations

Because it is the operative pleadings that define the issues presented in a summary judgment proceeding, we first examine the allegations of the second amended complaint. Plaintiff asserted six causes of action in that document: libel per se, slander per se, defamation per quod, invasion of privacy by placing her in a false light, violation of the Unruh Civil Rights Act (Civ. Code, § 51), and negligent supervision and training. The last two claims were against Stanford only.

Civil Code section 45 defines libel as "a false and unprivileged publication by writing, printing, picture, effigy, or other fixed representation to the eye, which exposes any person to hatred, contempt, ridicule, or obloquy, or which causes him to be shunned or avoided, or which has a tendency to injure him in his occupation." "To prevail on a claim for libel, plaintiff must show four elements: that defendants published the statements; the statements were about plaintiff; that they were false; and that defendants failed to use reasonable care to determine the truth or falsity. (CACI 1704.)" (*Grewal v. Jammu* (2011) 191 Cal.App.4th 977, 990.)

Libel on its face, or libel per se, is "defamatory of the plaintiff without the necessity of explanatory matter, such as an inducement, innuendo or other extrinsic fact. . . ." (Civ. Code, § 45a.) The defamatory nature of the defendant's allegations would be "immediately apparent to any reader" who did not know any facts outside the face of the complaint. (*Walker v. Kiousis* (2001) 93 Cal.App.4th 1432, 1442.) Thus, a

statement may be found to be libelous per se "if it contains a charge by implication from the language employed by the speaker and a listener could understand the defamatory meaning without the necessity of knowing extrinsic explanatory matter. [Citation.] However, if the listener would not recognize the defamatory meaning without 'knowledge of specific facts and circumstances, extrinsic to the publication, which are not matters of common knowledge rationally attributable to all reasonable persons' [citation], the matter is deemed defamatory per quod and requires pleading and proof of special damages." (*McGarry v. University of San Diego* (2007) 154 Cal.App.4th 97, 112; see also *Wong v. Tai Jing* (2010) 189 Cal.App.4th 1354, 1369.) "Whether a statement can reasonably be given any defamatory interpretation is a legal question that we must resolve by determining the sense or meaning of the statements, under all the circumstances attending the publication, according to the natural and popular construction which would be ascribed to them by the average reader." (*Palm Springs Tennis Club v. Rangel* (1999) 73 Cal.App.4th 1, 5-6.)

Plaintiff based her libel claim on the anonymous letter she received in mid-October 2009. She characterized the letter as libelous per se because it implied that she had been accused of the crime of stalking and the crime of threatening physical violence against another person. Plaintiff added that she was "compelled to republish this letter to others"—to Stanford, to the Department of Fair Employment and Housing (DFEH), and to "a law firm"—in order to investigate the source of the letter, file a claim under the Fair Employment and Housing Act (FEHA), and determine whether defendants had interfered with her employment prospects.

Plaintiff's second cause of action alleged slander per se. Slander is defined in Civil Code section 46 to include "a false and unprivileged publication, orally uttered" to a third person, and which accuses the speaker's target of a crime, reports him or her as having a contagious or "loathsome" disease, or injures him or her professionally. "Words [that] fall within the purview of Civil Code section 46 are deemed to constitute slander

per se [citations] with the effect that the utterance of such words is actionable without proof of special damage." (*Albertini v. Schaefer* (1979) 97 Cal.App.3d 822, 829.)

Plaintiff's allegation pertained to the voice mail Knudsen received on November 9, 2009, "a few days" after she submitted her request for a transcript to be sent to Knudsen. Plaintiff alleged that all of the defendants "participated in the preparation" of this message.

Along with the voice mail, the second cause of action described the incident in March 2009, in which "one woman informed another woman in a [law school] bathroom, which Plaintiff inadvertently overheard, that Plaintiff was a 'stalker' and 'going after a Stanford professor . . . .' "

According to plaintiff, these defamatory statements, which could reasonably be understood to accuse her of the crime of stalking, were made "with malice and with the intent to injure Plaintiff's good name and reputation and to interfere with her employment, and her standing among the members of the University and the legal profession." The effect of these "aspersions" was to injure plaintiff in her occupation "in that plaintiff has not been able to find employment in law for eight of the past nine years."

In the third cause of action for defamation per quod, plaintiff again accused defendants of participating in the preparation of the letter to her and the voice mail to Knudsen. She also held defendants responsible for the conversation between the two women in the law school bathroom. In addition, plaintiff alleged that defendants had "colluded with" the partner of the retired Stanford professor, Marc Franklin, to prepare and circulate a memorandum and picture of plaintiff in order "to falsely characterize Plaintiff as a 'dangerous' individual." Plaintiff believed that defendants and Franklin's partner made it appear that she was a violent person "and that the retired professor should be concerned for his well-being and safety." In her view, the memorandum and picture were circulated "in retaliation for Plaintiff['s] having filed, among other things, a TRO

application against W[eisberg] in 2006." Plaintiff further believed that in addition to the conduct she had identified, defendants had made "similar statements to law firm[s] and other potential employers from 2001 to the present in an effort to retaliate against Plaintiff and waylay her career in law" because she had filed a lawsuit against the university and the law school as well as the TRO application against Weisberg. Consequently, she lost $1.5 million in potential earnings by being rejected for full-time employment as an attorney during eight of the preceding nine years.

The fourth cause of action reiterated the facts alleged in the previous paragraphs and characterized them as casting her in a false light, with defendants' knowledge that their defamatory statements would cast her in a false light and discourage employers from hiring her; alternatively, defendants "acted with reckless disregard for the truth" and "failed to use reasonable care to determine the truth or falsity of the said statements or whether a false impression would be created by the publication of such statements."[8]

The fifth cause of action depended on the application of Civil Code sections 51 and 52.[9] Section 51, known as the Unruh Civil Rights Act, requires "full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever." Plaintiff alleged that Stanford had " 'aided and abetted' law firms to discriminate against Indian females for employment from 2001 to the present by disparaging Plaintiff and her abilities and character to these law firms and

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[8] "False light is a species of invasion of privacy, based on publicity that places a plaintiff before the public in a false light that would be highly offensive to a reasonable person, and where the defendant knew or acted in reckless disregard as to the falsity of the publicized matter and the false light in which the plaintiff would be placed." (*Price v. Operating Engineers Local Union No. 3* (2011) 195 Cal.App.4th 962, 970.) "A 'false light' claim, like libel, exposes a person to hatred, contempt, ridicule, or obloquy and assumes the audience will recognize it as such." (*M.G. v. Time Warner, Inc.* (2001) 89 Cal.App.4th 623, 636.)

[9] All further statutory references are to the Civil Code unless otherwise stated.

other employers because she is an Indian woman," and by "spreading false and unwarranted rumors" about her to these law firms, including suggestions that she was a stalker. Plaintiff further alleged the following conduct, all based on her status as an Indian woman: (1) "harassing" her about repayment of her student loans and failing to investigate this "interference" in her financial affairs; (2) failing to provide information to potential employers and reference checkers about her attendance and graduation from the law school; (3) monitoring and suppressing her email to prevent her from contacting a retired professor to ask for his assistance in investigating the rumors that she was a "stalker"; (4) failing to investigate her claims of discrimination in referrals and hiring; and (5) failing to investigate hang-up calls from numbers associated with Stanford and monitoring "by Weisberg and/or his associates" whenever she was on campus, leading to her unsuccessful application for a TRO against him.

Finally, in her sixth cause of action for negligent supervision and training, plaintiff alleged that Stanford had breached its duty to ensure that professors at the law school "would not harass or disparage former students such as herself [*sic*]." Instead, Stanford failed to investigate or discipline Weisberg and others for their "outrageous behavior" against her -- namely, "the negative rumors, unwarranted and repeated phone calls, monitoring behavior and interference with Plaintiff's career and financial affairs, among other things, that she believed W[eisberg] and others were conducting against her."

4. Defendants' Showing

The essence of defendants' motion was that even after nearly a year of discovery, plaintiff would not be able to prove any of her claims. Instead, defendants argued, she was proceeding on nothing more than suspicion, speculation, and imagination. Defendants focused on each event described in plaintiff's second amended complaint, asserting that plaintiff had admitted she had no evidence of a "causal link between them

and the . . . incidents that supposedly harmed [p]laintiff."[10] Citing *Pettus v. Standard Cabinet Works, et. al.* (1967) 249 Cal.App.2d 64, 69, defendants argued that compelling them to go to trial in these circumstances " 'would not only subject the defendant[s] to the wildest speculation . . . but . . . distort the basic principle [that] requires a plaintiff to establish liability by a preponderance of the evidence.' "

In support of the motion defendants offered a December 2010 declaration by Weisberg and deposition testimony by plaintiff. Weisberg stated that he did not recall plaintiff's having been in one of his classes before her graduation in 1994. He did not remember even meeting her until July 2006, at the hearing on plaintiff's application for a TRO against him. He knew nothing about the "bathroom incident" in which plaintiff overheard two women apparently discussing her; he knew nothing about the anonymous letter calling her a stalker; he was unaware of the voice mail message to Knudsen until he received plaintiff's complaint; and he knew nothing about the alleged memorandum and photo describing her as a dangerous person. Weisberg further stated that he had never monitored or asked anyone to monitor plaintiff in the library, as she had alleged in the complaint; indeed, except for the TRO proceeding, he had never had *any* contact with plaintiff or her family members, nor had he ever described her as a dangerous or violent person to anyone or asked anyone to provide negative information about her.

Weisberg's extensive statement addressed each of the material allegations against him. Clearly his declaration supplied admissible evidence establishing not only that he knew nothing about any of the acts she attributed to him, but also that he had never had

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[10] Defendants appear to have conflated two elements in stating their position on the defamation and false-light claims. Their arguments (both below and on appeal) have alternated between their main assertion -- that plaintiff had no evidence that Stanford or Weisberg made the alleged defamatory statements -- and the point that plaintiff could not show a causal link between the alleged conduct and the harm it caused her. The distinction, however, is immaterial in this case, as it does not affect the ultimate outcome of defendants' motion. Plaintiff does not contend otherwise.

any contact with plaintiff after her graduation except when she unsuccessfully sought a TRO against him in 2006. Plaintiff offered no evidence raising even a marginally triable issue of fact with respect to Weisberg's involvement. For example, in her responsive statement of undisputed facts she asserted that the content of the letter and the mention of Weisberg's name were sufficient to implicate him. Her declaration did not contradict Weisberg's statement that he could not recall having her in his class or even meeting her before the TRO hearing. The apparent basis for believing he had something against her was that she had heard that he was a supervisor of the former director of Career Services, who was one of the defendants in her 1997-2001 lawsuit against Stanford. Shortly after she settled that action she saw Weisberg in the library, and he gave her a "very hostile look." In April 2006 she saw him again in the library; he "loitered" near her cubicle and "posted" students close by to monitor her.

These perceptions and the discomfort she experienced in 2006 did not serve as evidence that Weisberg had disseminated pejorative information about her to others. In her deposition she based her accusations against him on his presumed motive to retaliate against her for filing the TRO application against him, her belief that he was a "vengeful" person, the "curiosity of [the] timing," the content of the voice mail invoking his name, and the numerous rejection letters she had received from law firms that regularly interviewed at Stanford. Plaintiff admitted that she was aware of no witnesses who could state that Weisberg had interfered with her attempts to secure employment, nor anyone other than the anonymous author of the letter predicting that Weisberg would tell potential employers that she was a stalker. Plaintiff's attribution of responsibility to Weisberg for the defamation and invasion of privacy was correctly adjudicated against her.

Plaintiff devotes most of her efforts on appeal to addressing *Stanford's* liability rather than attempting to continue trying to implicate Weisberg. In their moving papers, however, defendants presented evidence that Stanford did not create or send the

anonymous letter or the voice mail or cause either to be sent. They further pointed out that the letter was sent only to plaintiff, and they argued that her publication of it was not compelled.[11]

Defendants' argument has merit in both respects. In her deposition plaintiff testified that she had "no idea" who had sent the letter or for what motive, and she had no evidence that Stanford was involved in its preparation. When asked why someone who wanted to remain anonymous would write "SLS" (for "Stanford Law School") in the return address portion of the envelope, she speculated that if not a "legitimate threat," it could have been a prank, either by people who did not like her or by someone who did not like Weisberg and wanted to warn her that he was harming her career. Plaintiff was unable to identify anyone other than Knudsen who would be willing to say he or she heard something negative about her. And she could name no one who had informed her that Stanford was publishing false disparaging rumors about her other than the anonymous author of the letter, the anonymous person who left the voice mail, and the two unidentified women in the law school bathroom. She admitted that she did not "yet" have any evidence beyond the letter, the voice mail, and her suspicion that any of the defendants had "promoted discrimination against her by law firms." Indeed, she admitted that the letter and the voice mail constituted the only evidence she had that Stanford had either made defamatory statements about her to a third party or threatened to do so.

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[11] It is unnecessary to address Stanford's defense to an unidentified e-mail to which plaintiff only vaguely alluded in her complaint. We also need not discuss defendants' statute-of-limitations defense to other alleged acts, because they do not constitute the gravamen of any of the first four causes of action. Plaintiff's focus on appeal is on the anonymous letter and the voice mail to Knudsen. Her description of events involving the reference checker, the loan default notices, and Stanford's "flawed" and "biased" investigations of her complaints were not presented as separate claims but only illustrated why she believed Stanford had a longstanding motive to cast her in a negative light.

"In some cases, the originator of a statement may be liable for defamation when the person defamed republishes the statement, provided that the originator 'has reason to believe that the person defamed will be under a strong compulsion to disclose the contents of the defamatory statement to a third person *after* he has read it or been informed of its contents. [Citations.]' (*McKinney v. County of Santa Clara* (1980) 110 Cal.App.3d 787, 796.) However, this rule 'has been limited to a narrow class of cases, usually where a plaintiff is compelled to republish the statements in aid of disproving them.' (*Live Oak Publishing Co. v. Cohagan* (1991) 234 Cal.App.3d 1277, 1285.) Moreover, the originator of the statement must foresee the likelihood of compelled republication when the statement is originally made." (*Beroiz v. Wahl* (2000) 84 Cal.App.4th 485, 497.)

Plaintiff did not supply the necessary basis for inferring a compulsion to disclose that would bring her within the exception to the publication element of libel. Asked why she felt compelled to publish the letter herself, she answered that she needed to know who might have sent it, so she sent it to the General Counsel's office, as well as to DFEH, to prompt an investigation. She was also compelled to disclose it to Knudsen because "he needed proof that there was a credible threat" against her.

These explanations, however, do not supply a basis for establishing Stanford's liability for libel. First, there are no facts suggesting a reasonable foreseeability that plaintiff would be under a strong compulsion to publish the letter to a third party. This situation is not comparable to those cases in which the plaintiff is compelled to disclose an unfavorable statement in order to explain or refute it, such as a negative personnel evaluation (see, e.g., *McKinney v. County of Santa Clara, supra,* 110 Cal.App.3d at p. 797 [former employee's disclosure to prospective employers of defamatory statements in performance review foreseeable]; compare *Davis v. Consolidated Freightways* (1994) 29 Cal.App.4th 354, 373 [no evidence that plaintiff's voluntary disclosure to union employees was compelled to explain defamatory statements to prospective employers];

see also *Beroiz v. Wahl, supra,* 84 Cal. App. 4th at p. 497 [no evidence republication was necessary in order to disprove the accusations against plaintiff]; *Live Oak Publishing Co. v. Cohagan, supra,* 234 Cal.App.3d at pp. 1286-1287 [no facts offered that plaintiff was compelled to publish allegedly defamatory letter].) Instead, plaintiff's admitted intent in disclosing the letter was to initiate an investigation by the General Counsel and DFEH, and to prove to Knudsen that she had been threatened. She was attempting not to refute the accusations it contained, but to show that those accusations were made, with the ultimate objective of discovering the source of the disparagement and presumably stopping it.

"The rationale for making the originator of a defamatory statement liable for its foreseeable republication is the *strong causal link* between the actions of the originator and the damage caused by the republication." (*McKinney v. County of Santa Clara, supra,* 110 Cal.App.3d at p. 797, italics added.) There is no such link here: the statements made in the letter itself cannot be said to have caused her inability to find employment, because the disclosure to the General Counsel, DFEH, and Knudsen was completely unrelated to that harm. Even if she felt *personally* compelled to disclose it to these third parties, none was a prospective employer who reasonably could be expected to receive the information and consequently refuse to hire her.[12] (Cf. *Davis v. Consolidated Freightways, supra,* 29 Cal.App.4th at p. 373 [no strong compulsion to disclose theft accusation where employer had strict policy against giving out employee information to prospective employers beyond dates of employment].) None of the cases cited by plaintiff supports her claim.

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[12] On appeal, plaintiff represents Knudsen as a "potential employer," citing her deposition testimony in which she suggested that role for him. This characterization is disingenuous; she clearly acknowledged in her deposition that she was only using Knudsen to assist her in testing her hypothesis that Stanford was disparaging her to law firms that might otherwise hire her. Knudsen testified that there was never a point at which he understood that she was applying to his firm for a job.

The second cause of action for slander per se fares no better. Plaintiff relies on the tenet that circumstantial evidence raising a reasonable inference of causation may be sufficient to withstand a summary judgment motion. She is correct that in a summary judgment proceeding " 'the court must "consider all of the evidence" and "all" of the "inferences" reasonably drawn therefrom . . . .' At the same time, ' "[w]hen opposition to a motion for summary judgment is based on inferences, those inferences must be reasonably deducible from the evidence, and not such as are derived from speculation, conjecture, imagination, or guesswork." [Citation.]' . . . In this case, [plaintiff] presents nothing but speculation. 'Speculation, however, is not evidence.' (*Aguilar v. Atlantic Richfield Co.* [(2001)] 25 Cal.4th [826,] 864.)" (*Annod Corp. v. Hamilton & Samuels* (2002) 100 Cal.App.4th 1286, 1298-1299; see also *Bowman v. Wyatt* (2010) 186 Cal.App.4th 286, 314 [circumstantial evidence insufficient if it creates only a possibility of causation based on speculation and conjecture].)

Plaintiff points out that defendants presented no declarations from the employees who handled plaintiff's transcript request, who she believes are the most likely culprits in the voice mail message. Even accepting that argument, we cannot find a basis for finding causation here. The message was conveyed to Knudsen, not to anyone else. Although the caller may have believed plaintiff's ruse and assumed that Knudsen was a prospective employer, in fact he was not. Accordingly, the defamatory message could not have caused the harm she allegedly suffered—that is, injury to her "*future* employment prospects" and impairment of her ability "to find employment in law for *eight of the past nine* years." [13] (Italics added.)

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[13] In light of this dispositive deficiency, it is unnecessary to address the court's observation that plaintiff 's declaration contained the statement that she "never sent the voice mail message described in paragraph 59," a paragraph that did not describe any voice mail. Even accepting the validity of plaintiff's protest that she meant paragraph 63, not 59 and did not herself send the message to Knudsen, we see no improvement in her prospects for proving the elements of slander based on the voice mail.

The conversation in the bathroom was even weaker as a basis for holding Stanford liable. The woman who allegedly characterized her as "that Indian woman" who is a "stalker" and "going after a Stanford professor" was not only unidentified, but unidentifiable. Plaintiff herself had "no idea" if the two women were students, employees, graduates, or strangers. If the conversation was the speaker's republication of what she had heard, it was nevertheless impossible to trace the source of the original slanderous statement describing plaintiff. The speaker could have heard this rumor from anyone on or off the Stanford campus. Not only was plaintiff unable to attribute the offensive description (whether the original or the republished one) to any Stanford employee, but she was unable to suggest any causal connection between the presumed original statement and her inability to secure employment. Indeed, plaintiff again makes no effort to explain how the March 2009 bathroom conversation made her unable to find employment "for eight of the past nine years," as alleged in her complaint.

The third cause of action for defamation per quod added the allegation that Stanford "and in particular, W[eisberg]," generated and circulated the memorandum and picture of plaintiff in order "to falsely characterize Plaintiff as a 'dangerous' individual." Once again, however, she was unable to suggest a viable causal nexus between the memorandum and picture and the employment rejections from law firms. In the complaint she merely alleged that defendants had made "similar statements" to potential employers. In her deposition, however, she admitted that she had no evidence that any of the employers to whom she had applied had ever received any negative information about her from Stanford—nor evidence that any of them had even asked about her before sending her the rejection letter.

Plaintiff was also unable to attribute the memorandum and picture—which she said she had learned about from the security guard and manager of Professor Franklin's residence—to Stanford. She only inferred that Stanford or Weisberg had something to do with the circulation of the memorandum and picture because afterward, while she was at

the law school, she "heard reference that [she] was a stalker and that [she] was going after a Stanford professor."[14] Plaintiff even admitted that she had no first-hand knowledge of the contents of the memorandum; she only *assumed* that it called her a "dangerous personality" based on the fact that the memorandum existed.

On appeal, plaintiff does not separately attempt to challenge the adjudication of the fourth cause of action for invasion of privacy by placing her in a false light.[15] We therefore presume that this argument has been abandoned. In any event, the claim fails for the same reasons discussed above. Plaintiff vaguely alleged that defendants had described her as a stalker and a dangerous personality, that they had caused the circulation of the memorandum and picture, that they were responsible for the anonymous letter and voice mail, and that they had disseminated false statements about her violent tendencies. "When a false light claim is coupled with a defamation claim, the false light claim is essentially superfluous, and stands or falls on whether it meets the same requirements as the defamation cause of action." (*Eisenberg v. Alameda Newspapers* (1999)74 Cal.App.4th 1359, 1385, fn. 13.) Because defendants established

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[14] Plaintiff refused to believe that Professor Franklin had had anything to do with the generation of the memorandum, or that he even knew about it, because she knew him "well enough to know that he would not do that." Instead, she "surmised" that it was the professor's partner who requested the circulation of the memorandum and picture and asked that plaintiff not be allowed on the property. Plaintiff admitted during her deposition, however, that she had previously told Professor Franklin that she loved him and that she wanted to have a romantic relationship with him. She also admitted that he had asked her not to contact him again. She later did contact him again, she said, only because she needed help dealing with Weisberg's "harassing phone calls" and "obstruction of [her] employment prospects."

[15] To prevail on her claim of "false light" invasion of privacy, she would have to prove to the jury that defendants made statements placing her in a false light that would be highly offensive to a reasonable person. (*Fellows v. National Enquirer, Inc.* (1986) 42 Cal.3d 234, 238-239.)

as a matter of law that plaintiff would be unable to prove the elements of libel and slander, the false-light claim, which was based on the same facts, also fails.

Plaintiff has also not challenged the superior court's adjudication of the fifth cause of action for violation of the Unruh Civil Rights Act, Civil Code sections 51 and 52; she has thus waived appellate review of that ruling. She does, however, contest the determination that Stanford cannot be liable on the sixth cause of action, for negligent supervision and training. Plaintiff alleged that for six years, she had asked Stanford to "investigate and put an end to the negative rumors, unwarranted and repeated phone calls, monitoring behavior and interference with Plaintiff's career and financial affairs, among other things, that she believed W[eisberg] and others were conducting against her." Despite assurances from defendants, the "outrageous, false and unwarranted information distributed to third parties, including law firms," had continued, as had the "unwarranted and intimidating phone calls."

Plaintiff's deposition testimony was fatal to her claim. By referring to Weisberg "and others," she explained, she meant *associates* of Weisberg. She was unable to identify any of them, however. She admitted that she did not even know that in fact there *were* others who were involved. Thus, she acknowledged that any liability for the conduct of these unidentified associates was dependent on Stanford's negligence in supervising and training Weisberg. She was unaware of what training he might have received; she only inferred that it was inadequate based on the anonymous letter and the voice mail. Thus, the sixth cause of action was entirely dependent on the defamation claims against Weisberg, which we have already concluded fail as a matter of law. As there was no basis for inferring that Weisberg was responsible for either of those experiences, Stanford could not be liable for failing to train and supervise him adequately.

Plaintiff adds a new theory of negligence on appeal, that Stanford breached its duty to train and monitor the employees who handled her transcript requests by "failing

to investigate [her] numerous complaints for ten years except for one biased investigation in 2004." The evidence she cites pertains to requests for investigations in letters she sent in 2002, 2003, 2004, 2005, 2008, and 2009.[16] None of these complaints, however, pointed to registrar's office personnel as the source of unfavorable rumors about her. Moreover, in asserting Stanford's disregard of her concerns "over the years," plaintiff does not provide authority for her assumption that Stanford had a duty to investigate *alumni* complaints as well as those of its students and employees.

Finally, even if there was such an obligation, plaintiff has not provided a causal nexus between the failure to investigate and the loss of employment income she suffered, which was the harm she alleged in her complaint. As in *Saelzler v. Advanced Group 400* (2001) 25 Cal. 4th 763, 781, "[p]laintiff has had ample opportunity, through pretrial discovery, to marshal evidence showing that defendants' asserted breach of duty actually caused her injuries." As the evidence at hand shows only a "speculative possibility" that additional measures by Stanford might have restored or enhanced plaintiff's reputation and alleviated her difficulty in securing employment, plaintiff's theory did not generate a material issue of fact that requires the process of trial. (*Ibid.*; *Guz v. Bechtel National, Inc.*, *supra*, 24 Cal.4th at p. 334.) Consequently, defendants were entitled to adjudication of this cause of action as a matter of law.

5. Evidentiary Objections

Plaintiff next challenges the superior court's exclusion of "critical pieces of evidence" that she believes demonstrate Stanford's "malicious behavior" toward her. Plaintiff first disputes the exclusion of the following statement from her declaration: "Documented Reference Check sent me the written declaration of their caseworker attesting to her interactions with Stanford Law School." This statement was in fact, not

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[16] One of those 2009 complaints was made after plaintiff filed the original complaint in this action.

excluded; the court overruled defendants' objection. Nor did the court exclude the caseworker's purported declaration itself; what was excluded was plaintiff's hearsay statement regarding what Documented Reference Check told her by phone. As to that ruling, we need not comment on the continuing discussion of the correct standard of review for evidentiary objections in summary judgment proceedings. Whether we apply the abuse-of-discretion standard or de novo review, the lower court did not err in sustaining defendants' objection: plaintiff's statement regarding what she learned from the reference checker unquestionably contained hearsay.[17] In any event, plaintiff did not show how the excluded evidence was relevant; the only asserted consequence she offers for the court's ruling was that it compromised "the determination of whether Stanford had continued to act maliciously against [plaintiff] after she settled her previous case with Stanford in 2001." Had plaintiff's hearsay declaration been admitted, it would not have contributed to an inference that its past conduct made Stanford responsible for the anonymous letter, the voice mail, or the conversation in the law school bathroom, or that these defamatory communications deprived her of employment opportunities.

6. Conclusion

In summary, defendants presented evidence, through declarations and plaintiff's own testimony, that plaintiff would be unable to produce any evidence supporting the claims in her second amended complaint, and plaintiff failed to produce admissible

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[17] The full statement to which defendants successfully objected was the following: "In the Fall of 2005, I contacted Documented Reference Check by phone and was informed that a caseworker with the reference check firm contacted the Career Services Office, that the representative from the Office explained to her that she would need a written authorization from the Registrar's Office to obtain information about me." Even if the information provided by the Career Services representative was not offered for the truth (that written authorization was required), plaintiff's own statement regarding what the caseworker told her was clearly hearsay, to which plaintiff offered no tenable exception. Plaintiff's vague suggestion that Evidence Code section 1250 permits her statement as an "explanation of her conduct at the time" is unconvincing.

evidence raising a triable question of fact material to any of the issues raised in her complaint. Although causation is ordinarily a question for the trier of fact, there must be some factual basis for a plaintiff's general assertion of causation; otherwise "the conclusion is unavoidable that summary judgment was properly granted." (*Leslie G. v. Perry & Associates* (1996) 43 Cal.App.4th 472, 488; accord, *Saelzler v. Advanced Group 400, supra*, 25 Cal. 4th at p. 775.)

Clearly plaintiff has experienced considerable emotional and professional challenges since her graduation from Stanford Law School in 1994. Nevertheless, defendants established that because plaintiff would not be able to prove the elements of her defamation and related claims, they were entitled to judgment as a matter of law. We must conclude, therefore, that defendants' motion was properly granted. As plaintiff's challenge to the order requiring her to pay costs is entirely based on the asserted error in granting summary judgment, we must uphold that order as well.

Disposition

The judgment and postjudgment order are affirmed.

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ELIA, J.

WE CONCUR:

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RUSHING, P. J.

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PREMO, J.